

347—77.2(89A) Permanent variance and interim order. A permanent variance may be granted by the commissioner when the applicant cannot comply with rules adopted by the commissioner without undue hardship. The commissioner shall consider the age of the facility, the general operating condition of the facility and the effect upon the safe operation of the facility under the variance in determining if a variance shall be granted.

77.2(1) Any owner of a facility covered under Iowa Code chapter 89A desiring a permanent variance from a rule or portion thereof may file a written application with the commissioner.

77.2(2) Contents. An application filed pursuant to 77.2(1) shall include:

- a.* The name and address of the applicant;
- b.* The address, specific location, and state I.D. number, if any, of the facility involved;
- c.* A description of the operation and type of facility;
- d.* A listing of the rules to which the variance would apply;
- e.* A representation by the owner specifying the undue hardships which would arise from compliance with Iowa Code chapter 89A and its applicable rules and the effect upon the safe operation of the facility under the variance supported by representation from qualified persons having firsthand knowledge of the facts represented; and
- f.* A request for a hearing if one is desired.

77.2(3) Interim order. An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The commissioner may rule *ex parte* upon the application.